

# Bikinis & Martinis

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On 18 February 2018 Thailand issued a notification under the Consumer Protection Act (1979), which regulates residential structure (i.e., e.g. house, apartment, and condominium) leases. Pursuant to the notification any person or company that leases five or more residential structures (with some limited exceptions) is considered a residential structure "business operator".

The notification goes into effect on 1 May 2018 and requires all residential lease agreements between a business operator and the lessee to include a readily legible version in Thai. Details of the physical condition of the property and equipment (if any), inspected and acknowledged by the lessee, must be attached to the lease agreement.

The entire agreement must be made in duplicate, having the same content, one of which must be given to the lessee immediately upon execution. And the agreement must contain at least the following details:

- a. name and address of the business operator and its authorized person;
- b. name and address of the lessee;
- c. name and location of the property;
- d. details of the property's physical condition, including any items and equipment in the property;
- e. term of the lease, specifying its commencement and expiration dates, months and years;
- f. rental fee, due date and method for payment;
- g. public utility fee rates for example, electricity supply fee, water supply fee, telephone fee, due dates and method for payment;
- h. service fee rates for example, electricity and water meter reading fees, water pump fee for boosting water pressure in the property, which must be reasonable and at the actual cost paid for the services, due date and method for payment;
- i. other fees and expenses (if any), which must be reasonable and at the actual cost paid, due date and method for payment; and
- j. amount of security deposit.

The notification requires the business operator send invoices for the fees in items (f)-(i) above to the lessee at least seven days before the rental payment due date.

Furthermore the notification requires that any security deposit must be immediately returned to the lessee at the end of the agreement, unless the business operator has to investigate any damage to ascertain whether or not it is the responsibility of the lessee.

If the lessee is found not to have caused such damage, the security deposit must be returned within seven days from the end of the



agreement and the business operator retaking possession of the property. The business operator is also responsible for any expenses incurred in returning the security deposit to the lessee.

Significantly, affected lessees will now have the right to terminate lease agreements that come under the notification's regulation early, provided that: at least 30 days' advance written notice is given to the business operator; the lessee does not owe any rent; and there is a reasonable and necessary cause for such termination.

Any material breach for which the business operator can terminate the agreement must be clearly written in red, bold, or italic font. The business operator can only terminate the agreement if written notice has been given to the lessee to rectify the breach within 30 days of receipt and the lessee fails to do so.

Furthermore residential lease agreements that are subject to the notification must not contain the following:

- (1) Any waiver or limitation of the business operator's liability from its breach of agreement or wrongful acts;
- (2) Any advance rental fee equivalent to more than one-month's rent;
- (3) Any term allowing the business operator to change the rental fee, public utilities fees, service fees, or any other expenses before the end of the agreement;
- (4) Any security deposit of more than one-month's rental fee;
- (5) Any term allowing the business operator to confiscate the security deposit or advance rental fee;
- (6) Any term allowing the business operator or its representatives to inspect the property without prior notice;
- (7) Any stipulation of electricity and water supply fees exceeding the rates specified by the relevant authorities;
- (8) Any term allowing the business operator to prevent or obstruct the lessee's access to the property to seize or remove the lessee's belongings if the lessee defaults on rental fees or other expenses relates to the lease of the property;
- (9) Any term allowing the business operator to request any fee for renewing the lease;

(10) Any term allowing the business operator to terminate the agreement early other than for a material breach of the lease agreement by the lessee;

(11) Any term making the lessee liable for damages incurred due to ordinary wear and tear from usage of the property's contents and equipment; or

(12) Any term making the lessee liable for damage to the property, contents, and equipment that was not the lessee's fault and in force majeure situations;

(13) Any term making the lessee liable for defects to the property, contents, and equipment incurred due to ordinary wear and tear through usage.

Beyond the obvious additional legal liabilities that the Notification presents for residential landlords, it may have other disturbing consequences for landlords and, as a result, Thailand's real estate market, for example:

- Landlords who have been charging a premium for utilities service may now be obliged to stop charging their mark-up from 1 May 2018 forward.
- Projects, particularly condominiums, that have marketed long-term prepaid leaseholds to foreigners of thirty, ninety years, or more may now be required to return all unused pre-paid rent save for up to one month in advance and such long-term prepaid lessees may now be allowed to also terminate their lease agreements for good cause as defined by the Notification.
- The Notification appears to end the current common long-term prepaid residential lease structure in certain developments that are marketed to foreigners from 1 May 2018 onward.

On the other hand, the protections afforded by the Notification should make residential leases a more attractive option to potential lessees. And that is good news for the real estate investment sector in Thailand.

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